



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2014-0431; FRL-9957-93-Region 4]

Approval and Promulgation of Implementation Plans; Alabama; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve in part and disapprove in part portions of the April 23, 2013, State Implementation Plan (SIP) submission, submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), for inclusion into the Alabama SIP. This final action pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure SIP submission.” ADEM certified that the Alabama SIP contains provisions that ensure the 2010 1-hour SO₂ NAAQS is implemented, enforced, and maintained in Alabama. EPA has determined that portions of Alabama’s infrastructure SIP submission, provided to EPA on April 23, 2013, satisfy certain required infrastructure elements for the 2010 1-hour SO₂ NAAQS.

DATES: This rule will be effective [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2014-0431. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Notarianni can be reached via electronic mail at notarianni.michele@epa.gov or via telephone at (404) 562-9031.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On June 2, 2010 (75 FR 35520, June 22, 2010), EPA revised the primary SO₂ NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th

percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour SO₂ NAAQS to EPA no later than June 2, 2013.

EPA is taking final action to approve Alabama's April 23, 2013, submission that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 1-hour SO₂ NAAQS, with the exception of interstate transport provisions pertaining to visibility protection requirements of section 110(a)(2)(D)(i)(II) (prong 4) and the state board requirements of section 110(a)(2)(E)(ii). With respect to the visibility protection requirements of section 110(a)(2)(D)(i)(II) (prong 4), EPA is not finalizing any action at this time regarding this requirement. With respect to Alabama's infrastructure SIP submission related to section 110(a)(2)(E)(ii) requirements respecting the section 128 state board requirements, EPA is finalizing a disapproval of this element of Alabama's submission in this rulemaking.

In a proposed rulemaking published on July 14, 2016, EPA proposed to approve in part and disapprove in part Alabama's 2010 1-hour SO₂ NAAQS infrastructure SIP submission submitted on April 23, 2013. *See* 81 FR 45428. The details of Alabama's submission and the rationale for EPA's actions are explained in the proposed rulemaking. Comments on the proposed rulemaking were due on or before August 15, 2016. EPA received adverse comments on the proposed action.

II. Response to Comments

EPA received two sets of comments, one of which was incomplete and therefore could not be addressed, on the July 14, 2016, proposed rulemaking on Alabama's 2010 1-hour SO₂ NAAQS infrastructure SIP submission. A summary of the complete comment and EPA's response is provided below. A full set of these comments is provided in the docket for today's final rulemaking action.

Comment: The Commenter stated that EPA must disapprove element 110(a)(2)(C) unless Alabama's SIP provides that no new minor source or minor modification of a major source can cause or contribute to a violation of any NAAQS.

Response: EPA agrees that section 110(a)(2)(C) and the minor new source regulations at 40 CFR sections 51.160 through 51.164 require SIPs to include procedures to prevent the construction of new minor sources and minor modifications of major sources if the new or modified source will interfere with attainment or maintenance of a NAAQS. EPA explained its approach to reviewing the minor source element of 110(a)(2)(C) in its proposed rulemaking for this action: "Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs." *See* 81 FR 45431-45432 (July 14, 2016). In its 2010 1-hour SO₂ NAAQS infrastructure SIP submission, Alabama certified that its SIP contains provisions to address the 110(a)(2)(C) requirements regarding new minor sources and modifications, and, as noted in EPA's proposed rulemaking, the following SIP-approved rules

address the minor source element of section 110(a)(2)(C): ADEM Admin. Code r. 335-3-14-.01 *General Provisions*, 335-3-14-.02 *Permit Procedure*, and 335-3-14-.03 – *Standards for Granting Permits*). These SIP-approved rules address NAAQS pollutants including SO₂. While the Commenter did not specifically object to any aspect of Alabama’s SIP submission with respect to section 110(a)(2)(C), EPA notes that Alabama’s SIP addresses this non-interference component for the minor new source/minor modification permitting element. Specifically relevant to this comment, these SIP-approved rules include provisions to prohibit the issuance of construction permits if the source at issue would result in a violation of any air quality standard. *See* ADEM Admin. Code r. 335-3-14-.03(1)(g).

III. Final Action

With the exception of interstate transport provisions pertaining to visibility protection requirements of section 110(a)(2)(D)(i)(II) (prong 4), and the state board requirements of section 110(a)(2)(E)(ii), EPA is taking final action to approve Alabama’s infrastructure submission submitted on April 23, 2013, for the 2010 1-hour SO₂ NAAQS for the above described infrastructure SIP requirements. EPA is taking final action to approve Alabama’s infrastructure SIP submission for the 2010 1-hour SO₂ NAAQS because the submission is consistent with section 110 of the CAA. EPA is finalizing disapproval of section 110(a)(2)(E)(ii) of Alabama’s infrastructure submission because the State’s implementation plan does not contain provisions to comply with section 128 of the Act, and thus Alabama’s April 23, 2013, infrastructure SIP submission does not meet the requirements of the Act.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a CAA Part D Plan, or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call), starts a sanctions clock. The

portion of section 110(a)(2)(E)(ii) provisions (the provisions disapproved in today's notice) were not submitted to meet requirements for Part D or a SIP call, and therefore, no sanctions will be triggered. However, that final action will trigger the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the date of this disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Date: December 20, 2016.

Heather McTeer Toney,

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B — Alabama

2. Section 52.50(e) is amended by adding a new entry “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO₂ National Ambient Air Quality Standard” at the end of the table to read as follows:

§ 52.50 Identification of plan.

* * * *

(e) * * *

EPA-Approved Alabama Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO ₂ NAAQS	Alabama	4/23/2013	[Insert date of publication in <u>Federal Register</u>], [Insert Federal Register page citation]	With the exception of interstate transport requirements of section 110(a)(2)(D)(i)(II) (prong 4), and the state board requirements of section 110(a)(2)(E)(ii).

3. Section 52.53 is amended by adding paragraph (d) to read as follows:

§ 52.53 Approval status.

* * * * *

(d) *Disapproval.* Submittal from the State of Alabama, through the Alabama Department of Environmental Management (ADEM) on April 23, 2013, to address the Clean Air Act section 110(a)(2)(E)(ii) for the 2010 1-hour sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS) concerning state board requirements. EPA is disapproving section 110(a)(2)(E)(ii) of ADEM's submittal because the Alabama SIP lacks provisions respecting state boards per section 128 of the CAA for the 2010 1-hour SO₂ NAAQS.

[FR Doc. 2017-00159 Filed: 1/11/2017 8:45 am; Publication Date: 1/12/2017]